Vandergriff et al v. Clermont County Public Library Board of Trustees Doc. 3

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

GEORGE AND CATHY VANDERGRIFF and INSTITUTE FOR PRINCIPLED POLICY,	:	Case No.: 1:08-cv-381
Plaintiffs,	:	
vs.	:	ORAL ARGUMENT REQUESTED
CLERMONT COUNTY PUBLIC LIBRARY BOARD OF TRUSTEES,	:	
Defendant.	:	

PLAINTIFFS' MEMORANDUM IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

Libraries and the First Amendment are often spoken of together, especially by libraries. In fact, libraries would have us believe that they serve as the vanguard of the First Amendment, promoting intellectual freedom and the right of all citizens to speak their minds and to hear others speak their points of view. To be sure, the American Library Association promotes the "Library Bill of Rights," which it describes "as the library profession's interpretation of the First Amendment to the United States Constitution." [1] The Library Bill of Rights takes a vigorous stand against those who would censor the content of public discussion and affirms "that all libraries are forums for information and ideas."[2]

Despite the library profession's supposed dedication and commitment to the First Amendment rights of individuals, officials of the Clermont County Library have prohibited

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[1] American Library Association, INTELLECTUAL FREEDOM MANUAL, xvii.
[2] *Id*. at 57.

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Plaintiffs from exercising their First Amendment rights to the freedom of speech and to the free exercise of religion by denying them use of the Library's community meeting rooms based solely on the religious viewpoint of Plaintiffs' speech. The Library's denial is not only hypocritical, but runs afoul of a long line of Supreme Court "equal access" decisions, starting with *Widmar v. Vincent*, 454 U.S. 263 (1981). These decisions firmly establish that allowing religious speakers equal access to a public forum is not only permissible under the Establishment Clause, but mandated by the Free Speech Clause.

Plaintiffs are not seeking a special privilege. They merely seek to utilize the Library's facilities on the same terms and conditions as everyone else. The Library cannot articulate any justification to countermand this constitutional right, and so the Library's discriminatory policy should be preliminarily enjoined.

SUMMARY OF FACTS[3]

George and Cathy Vandergriff are residents and taxpayers of Clermont County. In late December of 2007 they requested to use a meeting room at the Amelia Branch of the Clermont County Library (which they support through their property taxes) for a financial planning workshop sponsored by the Institute for Principled Policy. The workshop would be open to the general public. But when Library officials learned that the financial planning workshop would be based on biblical economic principles, they denied the request. The Library's reason? Because they "will be quoting bible versus [*sic*]," which would violate the Library's Meeting Room Policy prohibiting "religious events."

[3] Plaintiffs incorporate herein the facts set forth in their Verified Complaint.

ARGUMENT

Plaintiffs are entitled to a preliminary injunction if they show: (1) a likelihood of success on the merits; (2) a threat of irreparable harm absent an injunction; (3) that granting the injunction will cause no substantial harm to others; and (4) that an injunction is in the public interest. *Tucker v. City of Fairfield*, 398 F.3d 457, 461 (6th Cir. 2005). These are factors to be balanced, not prerequisites to be met. *United States v. Edward Rose & Sons*, 384 F.3d 258, 261 (6th Cir. 2004).

In cases that implicate First Amendment freedoms, the first factor is generally determinative. See *Connection Distrib. Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998). This is because even a minimal infringement on First Amendment values constitutes irreparable injury, and protecting against this injury is always in the public interest. *Déjà Vu of Nashville, Inc. v. Metro. Gov't of Nashville and Davidson County, Tennessee*, 274 F.3d 377, 400 (6th Cir. 2001). Moreover, no substantial harm is inflicted on others merely by protecting such rights. *Id.* As shown below, Plaintiffs have a high probability of success on the merits, and thus a preliminary injunction is warranted in this case.

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS.

A. *The Library's Meeting Room Policy violates Plaintiffs' rights to the freedom of speech under the First Amendment.*

Plaintiffs' strong likelihood of prevailing on the merits in this action is attributable to the manifest unconstitutionality of the Library's Policy of accommodating the use of its meeting rooms for meetings presenting a secular viewpoint on a particular subject, and excluding Plaintiffs'—because of the religious viewpoint of the message.

In analyzing the constitutional protections that are accorded free speech rights, courts ordinarily use a three-step analysis. These steps are (1) a determination of whether the speech is protected speech, (2) a determination of the nature of the forum in which the speech would be presented, and (3) an analysis of whether the justification presented by the state satisfies the relevant standard. *Cornelius v. NAACP Legal Defense & Educ. Fund, Inc.*, 473 U.S. 788, 797 (1985). Each step is discussed below.

1. *Plaintiffs' speech is protected*.

There is no question that, as a general matter, Plaintiffs' religious speech is protected by the First Amendment. See *Widmar*, 454 U.S. at 269 ("religious worship and discussion … are forms of speech and association protected by the First Amendment"). In fact, the Supreme Court has emphasized that the First Amendment is particularly protective of religious speech:

> Our precedent establishes that private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression. … Indeed, in Anglo-American history, at least, government suppression of speech has so commonly been directly *precisely* at religious speech that a free-speech clause without religion would be *Hamlet* without the prince.

Capitol Square Review & Advisory Bd. v. Pinette, 515 U.S. 753, 760 (1995) (citations omitted; emphasis in original).

2. *The meeting room is a designated public forum*.

The second step involves a forum analysis. Public places or communicative venues are generally categorized into three categories: "the traditional public forum, the public forum created by government designation, and the nonpublic forum." *Jobe v. City of Catlettsburg*, 409 F.3d 261, 266 (6th Cir. 2005) (citing *Cornelius*, 473 U.S. at 802).

The traditional or open public forum (sometimes called "quintessential public forum") is one which by long tradition or by government fiat has been devoted to assembly and debate, such as parks, streets and sidewalks. *Perry Educ. Assn v. Perry Local Educators' Assn.*, 460 U.S.

37, 45 (1983). Plaintiffs make no claim that the forum at issue in this case falls into that category. This leaves the designated (or limited) public forum[4] and the nonpublic forum.

When the government opens a property "for use by the public at large for assembly and speech, for use by certain speakers, or for the discussion of certain subjects," it has created a designated public forum. *Kincaid v. Gibson*, 236 F.3d 342, 348 (6th Cir. 2001) (quoting *Cornelius*, 473 U.S. at 802). The line between a designated public forum and a nonpublic forum "may blur at the edges," and is really more in the nature of a continuum than a definite demarcation. *Cornelius*, 473 U.S. at 819 (Blackmun, J., dissenting) (citing *United States Postal Service v. Council of Greenburg Civic Assns.*, 453 U.S. 114, 132 (1981)). As a result of the hazy boundaries of these two forums, the task of classifying a forum can be rather challenging. This lack of distinct delineation is evidenced by the nature of the standard itself.

A designated public forum is created only by "purposeful government action." *Arkansas Educational Television Commission v. Forbes*, 523 U.S. 666, 667 (1998). The government does not create one "by inaction or by permitting limited discourse, but only by intentionally opening a nontraditional public forum for public discourse." *Cornelius*, 473 U.S. at 802. The key is whether the government intended to make its property "generally available" to either the general public or to a certain class of speakers. *Forbes*, 523 U.S. at 679. "Granting one [speaker] access to the stage at a time does not, of course, necessarily preclude a finding that a school has created a limited public forum." *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 304 (2000).

Here, the Library meeting room is a designated public forum. Outside organizations are eligible to use a meeting room for "activities that further the Library's mission to be responsive to community needs and to be an integral part of our community." (Verified Complaint ("Compl."), at ¶ 11, Ex. A) Plainly, in drafting this policy, the Library envisioned a wide array of organizations utilizing its meeting rooms to discuss a vast array of topics. This is not a policy of "selective access," the essential characteristic of a nonpublic forum. See *Forbes*, 523 U.S. at 679. Rather, the policy makes the meeting rooms generally available to a broad class of speakers for a broad class of topics. Policies such as this create a designated public forum. See, *e.g.*, *United Food & Commercial Workers Union, Local 1099 v Southwest Ohio Reg'l Transit Auth.*, 163 F.3d 341, 355 (6th Cir. 1998) (transit authority created designated public forum by opening advertising space for any advertisements that were not "controversial" or were not "aesthetically pleasing"); *Concerned Women for America*, 883 F.2d 32, 34 (5th Cir. 1989) (library created a designated public forum by opening its auditorium for use by civic, cultural, or educational groups).[5] To the extent there is any doubt that the Library has created a designated public forum, its recent accommodation of meetings to discuss local tax issues eliminates that doubt, demonstrating that financial planning issues are a welcomed subject for presentation in the forum.[6]

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[4] The Sixth Circuit treats "designated public forum" and "limited public forum" interchangeably. See *Kincaid v. Gibson*, 236 F.3d 342, 348 (6th Cir. 2001).

The alternative finding—that the Library's meeting rooms are nonpublic fora—can only be made by a negative finding, *viz.*, by determining the government instrumentality in question to be neither a designated public forum nor a traditional public forum. This finding is not available on the facts presented in this case.

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[5] See also *Neinast v. Bd. of Trustees of Columbus Metropolitan Library*, 346 F.3d 585, 591 (6th Cir. 2003) ("For purposes of First Amendment analysis, the Library is a limited public forum.")
[6] The financial plan presented at the meetings is available at http://www.ameliavillage.com/pdfs/EarningsTax.pdf (last checked June 2, 2008).

3. *The Policy is unjustified.*

The third part of the analysis requires an assessment of whether the government's action is justified in light of the nature of the forum. Whatever the classification of the government property, that determination is significant for the reason that a different standard of scrutiny applies to the government restrictions imposed on speech in the respective contexts. However, for all their differences, there is a common standard which applies to government restrictions in any forum, regardless of classification. It is for the reason of this consistent constitutional rule that Plaintiffs suggest that this Court need not engage the effort to determine the forum classification applying to the Library's meeting rooms. No matter the forum, the Library has violated the rule that attends to them all: viewpoint discrimination is prohibited.

a. *No matter what the particular forum classification, viewpoint-based discrimination is impermissible, thus making the often elusive forum classification an unnecessary component in ruling on the impropriety of the Library's action.*

At its core, the First Amendment forbids the government from regulating speech "in ways that favor some viewpoints or ideas at the expense of others." *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384, 394 (1993). Accordingly, viewpoint discrimination is presumptively unconstitutional, irrespective of the forum:

> When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant. Viewpoint discrimination is thus an egregious form of content discrimination. The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.

Rosenberger v. Rector and Visitors of the Univ. of Virginia, 515 U.S. 819, 829 (1995) (citations omitted); *see also Lamb's Chapel*, 508 U.S. at 384 (explaining that regulations in a nonpublic forum must be viewpoint neutral).

The Meeting Room Policy discriminates on the basis of viewpoint. When Plaintiffs requested permission to use a meeting room, they were denied because the Library does not permit any "religious events" to take place in its meeting rooms. (Compl., at ¶¶ 19-20.) Thus, for example, if Plaintiffs desired to conduct an event using a Keynesian text, rather than the Bible, to discuss financial planning, the event would not have conflicted with the Library's Meeting Room Policy. But because the Library determined that Plaintiffs wanted to discuss financial planning issues from a *religious* perspective, it is prohibiting Plaintiffs from using the forum.

The Supreme Court has consistently said that targeting religious speech for unfavorable treatment is viewpoint discrimination: "Religion is the viewpoint from which ideas are conveyed. … [W]e see no reason to treat the Club's use of religion as something other than a viewpoint merely because of an evangelical message it conveys." *Good News Club v. Milford Central Sch.*, 533 U.S. 98, 112 (2001). In *Good News Club*, a school district's community use policy allowed residents to use school facilities for "social, civic and recreational meetings and entertainment events, and other uses pertaining to the welfare of the community … ." 533 U.S. at 102. But the policy prohibited use "by any individual or organization for religious purposes." *Id.* at 103. As a result, the school district denied the Club's request to have weekly after-school meetings. *Id.* at 104.

The Supreme Court said it was "quite clear that [the school district] engaged in viewpoint discrimination when it excluded the Club from the afterschool forum." *Id.* at 109. The Court found that "any group that promotes the moral and character development of children is eligible to use the school building." *Id.* at 108 (citation and quotation marks omitted). And it was "clear that the Club teaches morals and character development to children." *Id.* But the Club was not given equal access to the facilities solely because its meetings were religious in nature—constituting blatant viewpoint discrimination. *Id.* at 108-09.

Similarly, in *Lister v. Defense Logistics Agency*, 482 F.Supp.2d 1003 (S.D. Ohio 2007), a federal agency adopted an employee bulletin board policy that allowed employees to post items and announcements of interest to other employees, but prohibited "items reflecting religious preference." *Id.* at 1005. This was unconstitutional viewpoint discrimination. *Id.* at 1010 ("The Court concludes that the exclusion of religious materials from a government bulletin board otherwise available to all employees for virtually all non-commercial messages is unconstitutional.")

Like the government defendants in *Good News Club* and *Lister*, the Library is impermissibly targeting religious speech. Plaintiffs' financial planning seminar would provide sound advice to Clermont County residents on preparing for their financial futures —permissible subject matters under the Library's Meeting Room Policy. But because Plaintiffs' event is conducted from a religious perspective and constitutes what the Library calls a "religious event," it was excluded from the forum. This is blatant viewpoint discrimination.

b. *Alternatively, the Meeting Room Policy is a content-based restriction in a designated public forum.*

Even if we assume that the Library's discrimination is not viewpoint-based, the Library cannot escape strict scrutiny review because it is restricting Plaintiffs' speech on the basis of its content in a designated public forum. And content-based censorship, like viewpoint discrimination, is presumptively unconstitutional in a public forum:

> [A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content … . The essence of this forbidden censorship is content control … . *Selective exclusions from a public forum may not be based on content alone, and may not be justified by reference to content alone.*

Police Dep't of City of Chicago v. Mosley, 408 U.S. 92, 95-96 (1972) (citations omitted; emphasis added).

In *Widmar v. Vincent, supra,* the Supreme Court held that a policy excluding "religious worship and discussion" from a public forum discriminated based on the religious content of a group's intended speech. 454 U.S. at 269-70. The same is true here. The Library refuses to allow Plaintiffs to use its meeting rooms solely because Plaintiffs intend to present biblically-based financial planning advice. Whether Plaintiffs can access this forum is determined entirely on the religious content of their speech.

The Library's rejection notice leaves no doubt that the rejection of Plaintiffs' application was based on the content of the presentation. The handwritten notes at the bottom of the notice indicate that the reason for the rejection was that the Plaintiffs would be "quoting bible versus [sic]" (Compl., Ex. B) Thus, the Library has imposed a content-based restriction in a designated public forum.

4. *The Meeting Room Policy cannot survive strict scrutiny*.

Viewpoint discrimination is *always* subject to strict scrutiny, regardless of the forum involved. See *Perry Educ. Ass'n*, 460 U.S. at 46. Likewise, content-based restrictions on speech in a designated public forum are subject to strict scrutiny. *Id*. at 45.

In the constitutional context, strict scrutiny is an "exacting test," requiring the government to prove that its restriction is narrowly tailored to a compelling government interest. *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 680 (1994) (O'Connor, J., concurring). "It is not enough that the goals of the law be legitimate, or reasonable, or even praiseworthy. There must be some pressing public necessity, some essential value that has to be preserved; and even then the law must restrict as little speech as possible to serve that goal." *Id.*

The Library cannot articulate a compelling interest that supports its Meeting Room Policy's restriction on religious events. Even should it attempt to base the restriction on the so-called "separation of church and state" or on the desire to avoid the appearance of a "state supported religion," this would not be a legitimate interest in this context. As the Sixth Circuit recently explained:

> [T]he ACLU makes repeated reference to "the separation of church and state." This extra-constitutional construct has grown tiresome. *The First Amendment does not demand a wall of separation between church and state*. Our Nation's history is replete with governmental acknowledgement and in some cases, accommodation of religion. After all, we are a religious people whose institutions presuppose a Supreme Being. Thus, state recognition of religion that falls short of endorsement is constitutionally permissible.

American Civil Liberties Union of Kentucky v. Mercer County, 432 F.3d 624, 638-39 (6th Cir. 2005) (internal citations and quotation marks omitted; emphasis added).

The problem with a "separation of church and state" justification in this case—beyond the fact that it is a construct not rooted in the Constitution—is that "there is a crucial difference between *government* speech endorsing religion … and *private* speech endorsing religion, which the Free Speech and Free Exercise Clauses protect." *Bd. of Educ. of Westside Cmty. Schs. v. Mergens*, 496 U.S. 226, 250 (2000) (emphasis in original). Private expression is not transformed into government speech merely because it takes place in a government facility. *Good News Club*, 533 U.S. at 116-17.

Nor is there a plausible fear in this case that Plaintiffs' speech would somehow be attributed to the Library. The Supreme Court has long held that a policy of equal access for private religious expression to a government forum creates no appearance of government endorsement. *Rosenberger,* 515 U.S. at 819; *Widmar*, 454 U.S. at 269. The Court in *Widmar* explained that where a forum is available on equal terms to a broad class of speakers, allowing religious speech "*does not confer any imprimatur of state approval* on religious sects or practices … [since] the forum is available to a broad class of nonreligious as well as religious speakers." 454 U.S. at 274 (emphasis added). The *Pinette* Court reaffirmed this point:

> We have twice previously addressed the combination of private religious expression, a forum available for public use, content-based regulation, and a State's interest in complying with the Establishment Clause. Both times, we have struck down the restriction on religious content … . And as a matter of Establishment Clause jurisprudence, we have consistently held that it is no violation for government to enact neutral policies that happen to benefit religion.

515 U.S. 762, 763-64.

Here, the Library allows a wide array of organizations to use its meeting rooms, but the Library does not endorse all the events that it permits. In fact, the Library expressly states in its Policy, "Permission to use the meeting room does not constitute endorsement by the Library of the group or the ideas presented." (Compl., Ex. A.) Under these circumstances, as in *Lamb's Chapel*, there is "no realistic danger that the community would think that the [Library] is endorsing religion or any particular creed, and any benefit to religion or to the [Plaintiff] would have been no more than incidental." 508 U.S. at 395.

The Fifth Circuit applied this principle in *Concerned Women for America Inc. v. Lafayette County,* holding that the Establishment Clause did not justify a public library's auditorium-use policy that prohibited religious meetings. 883 F.2d at 32. There, a public library opened its auditorium for civil, cultural, and educational groups to use, but refused to allow such groups to use the auditorium for religious purposes. *Id.* at 33. The plaintiff applied to use the auditorium for a meeting to "discuss family and political issues, pray about those issues, and seek to apply Biblical principles to them," but was denied under the library's policy. *Id.* at 33-34.

The library raised a single defense, arguing that allowing religious meetings in its auditorium would violate the Establishment Clause. Relying on *Widmar*, the Fifth Circuit held that a policy of equal access to a government forum does not implicate the Establishment Clause. *Id.* at 35.

Similarly, the Sixth Circuit has held that a school district policy allowing schools to distribute to students flyers from private organizations—including flyers advertising religious activities—does not violate the Establishment Clause. *Rusk v. Crestview Local Sch. Dist.*, 279 F.3d 418, 424 (6th Cir. 2004). Even impressionable elementary students, the Sixth Circuit explained, would understand that the school's practice of distributing flyers from a variety of organizations does not mean the school is endorsing the religious flyers. *Id.* at 422. If elementary students can understand this simple principle, then the Library's concerns are clearly unfounded.

Simply put, the Establishment Clause does not provide the Library *any* interest—much less a compelling one—that justifies its blatant discrimination against religious speech. Nor does the Library have any other plausible interest that could justify its Policy or the application of that Policy to Plaintiffs in this instance. Thus, it cannot survive strict scrutiny.

B. *The Meeting Room Policy violates Plaintiffs' right to the free exercise of religion under the First Amendment and the Ohio Constitution*.

The Library specifically singles out organizations that wish to conduct events from a religious perspective, and excludes them from a forum that would otherwise be available to them. This is an unconstitutional burden on the free exercise of religion.

1. *The Meeting Room Policy is not neutral and generally applicable, and is therefore subject to strict scrutiny under the Free Exercise Clause of the First Amendment*.

Laws which discriminate on the basis of religion are presumptively invalid, and only pass constitutional muster if they survive strict scrutiny. *Church of the Lukumi Babalu Aye v. City of*

Haileah, 508 U.S. 520 (1993); *Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990). The government may not impose "special disabilities on the basis of religious views or religious status." *Id.* at 877. The only time the government may justify a law which burdens the free exercise of religion without a compelling government interest is if the law is neutral and generally applicable.

The meeting room policy is not neutral and generally applicable, since it singles out "religious events" for disparate treatment. The Fourth Circuit reached this conclusion in *Fairfax Covenant Church*, where a school district allowed community groups to rent school facilities, but charged religious organizations an escalating rental fee that other non-profit groups did not have to pay. 17 F.3d at 705. The Fourth Circuit concluded that giving a church unequal access to a designated public forum "interferes with or burdens the Church's right to speak and practice religion protected by the Free Exercise Clause." *Id.* at 709. The burden here is even greater, as Plaintiffs are wholly excluded from the forum. Therefore, the Library is unconstitutionally burdening Plaintiffs' First Amendment rights to the free exercise of religion.

2. *The Meeting Room Policy is subject to strict scrutiny under the Ohio Constitution because it burdens Plaintiffs' free exercise of religion.*

As great as the protection for religious liberty is under the First Amendment, the protections provided by Article I, Section 7 of the Ohio Constitution are even greater. *Humphrey v. Lane*, 89 Ohio.St.3d 62, 68 (2000). Under this provision, any government regulation that "direct[ly] or indirect[ly] encroach[es] upon religious freedom" must "serve a compelling state interest and must be the least restrictive means of furthering that interest." *Id.*

Plaintiffs sincerely believe that the Bible is the inspired Word of God and as such is the source of all wisdom and knowledge, including in the area of finances and, more specifically, sound financial planning. (Compl., at ¶ 8.) Plaintiffs intended event is specifically designed to communicate and carry out these beliefs. (Compl., at ¶ 9.) The Library is imposing a substantial burden on those beliefs by excluding Plaintiffs from an otherwise available forum.

As a result, the Library's Meeting Room Policy is subject to strict scrutiny under the Ohio Constitution, even if it were found to be neutral and generally applicable. As explained above, the Library cannot articulate a compelling interest that justifies this intrusion on Plaintiffs' state constitutional rights.

II. Plaintiffs Are Suffering Irreparable Harm from the Loss of Constitutional Freedoms and an Injunction Enjoining the Policy is in the Public Interest and Will Not Harm the Library.

Plaintiffs easily satisfy the remaining elements necessary for a preliminary injunction to issue. Plaintiffs seek to exercise their fundamental right to free speech and free exercise of religion, but are singularly excluded from a public forum because of the religious nature of their expression. As such, they are suffering irreparable harm. See *Bonnell v. Lorenzo*, 241 F.3d 800, 809 (6th Cir. 2001) (citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976)) ("[W]hen reviewing a motion for preliminary injunction, if it is found that a constitutional right is being threatened or impaired, a finding of irreparable injury is mandated.") The Library will not be harmed, and the public interest will be served, by the issuance of a preliminary injunction that relieves the Plaintiffs' of the irreparable harm they are suffering. See *Déjà Vu of Nashville, Inc.*, 274 F.3d at 400 (citing *Connection Distrib. Co.*, 154 F.3d at 288) (when plaintiff "shows a substantial likelihood that the challenged law is unconstitutional, no substantial harm to other cans be said to inhere in its enjoinment"); *G & V Lounge, Inc. v. Michigan Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994) ("It is always in the public interest to prevent the violation of a party's constitutional rights.").

CONCLUSION

Twenty years of Supreme Court "equal access" jurisprudence establishes that speech cannot be excluded from a public forum solely because of its religious nature. Under the First and Fourteenth Amendments, Plaintiffs are entitled to a preliminarily injunction enjoining the Library from enforcing its discriminatory policy, thus allowing Plaintiffs access to the Library's meeting rooms for their event.

Respectfully submitted,

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